

ORIGINAL

Julie E. Schwartz, Bar No. 260624
 JSchwartz@perkinscoie.com
 PERKINS COIE LLP
 3150 Porter Drive
 Palo Alto, CA 94304-1212
 Telephone: 650.838.4300
 Facsimile: 650.838.4350

Attorneys for Non-Party
 Dropbox, Inc.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

MEJ

INTERMARINE, LLC,

Plaintiff,

v.

SPLIETHOFF
 BEVRACHTINGSKANTOOR B.V.,
 SPLIETHOFF AMERICAS, INC.,
 KASPER BIHLET,

Defendant.

CV 15-80211 MISC

Case No.

(S.D. Tex. Case No. 4:14-CV-00145)

DECLARATION OF JOHN TYLER IN
 SUPPORT OF NON-PARTY DROPBOX,
 INC.'S MOTION TO QUASH SUBPOENA
 TO TESTIFY AT A DEPOSITION IN A
 CIVIL ACTION

Date: September 10, 2015
 Time: 9:00 a.m.

BY FAX

I, John Tyler, declare and certify as follows:

1. I am an attorney with the law firm of Perkins Coie LLP in Seattle, and am one of the attorneys representing non-party Dropbox, Inc. in the above-entitled action. I have personal knowledge of the facts set forth in this declaration and am competent to testify.

2. I am informed that on October 31, 2014, Dropbox received a subpoena duces tecum from Plaintiff Intermarine, LLC ("Plaintiff"), seeking the production of certain documents related to Defendant Kasper Bihlet's ("Bihlet") Dropbox account to Bihlet's attorney for use in Case No. 4:14-CV-00145 currently pending in the U.S. District Court for the Southern District of Texas. A true and correct copy of this subpoena is attached as Exhibit A.

3. I am informed that on November 14, 2014, Dropbox sent a letter to Bihlet's attorney objecting to the subpoena. A true and correct copy of this letter and proof of Fed Ex delivery is attached as Exhibit B.

4. I am informed that on March 6, 2015, Dropbox received from Plaintiff a copy of an Order to Show Cause issued by United States District Judge Lee H. Rosenthal of the U.S. District Court for the Southern District of Texas. A true and correct copy of this order is attached as Exhibit C.

5. On March 9, 2015, I sent a letter on behalf of Dropbox to counsel for Plaintiff and Bihlet reiterating Dropbox's earlier objections and offering to meet and confer. A true and correct copy of this letter is attached as Exhibit D.

6. Between March 9, 2015 and May 18, 2015, I met and conferred with counsel for Plaintiff and Bihlet via telephone and email to resolve the issues raised by the subpoena and Order to Show Cause. On May 7, 2015, Dropbox, Plaintiff and Bihlet entered into a consent agreement whereby Bihlet would expressly consent to disclosure of his Dropbox content, and upon disclosure, Plaintiff would file a motion to rescind the Order to Show Cause. A true and correct copy of the form of the consent agreement is attached as Exhibit E.

7. I am informed that Bihlet expressly consented to disclosure via email on May 11, 2015, and that Dropbox produced responsive records to Bihlet pursuant to his express consent on May 19, 2015.

8. On July 2, 2015, Dropbox received a draft deposition notice from Plaintiff, requesting Dropbox to designate one or more Persons Most Knowledgeable to testify at a deposition in early August 2015. A true and correct copy of the draft deposition notice is attached as Exhibit F.

9. On July 14, 2015, I met and conferred with counsel for Plaintiff by telephone to discuss the topics contained in the draft deposition notice.

10. Only July 21, 2015, I sent a letter to counsel for Plaintiff objecting to the deposition notice, indicating that Dropbox would file a motion to quash any deposition subpoena.

1 and offering to provide a records custodian certificate of authenticity to resolve any issues of
2 admissibility and authenticity. A true and correct copy of this letter is attached as Exhibit G.

3 11. Only July 24, 2015, counsel for Plaintiff sent me a letter asking for a custodian of
4 records affidavit. A true and correct copy of this letter is attached as Exhibit H.

5 12. On July 27, 2015, Dropbox sent a custodian of records affidavit to Plaintiff, a true
6 and correct copy of which is attached as Exhibit I.

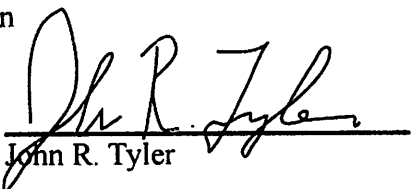
7 13. On July 27, 2015, Dropbox received a Subpoena to Testify at a Deposition in a
8 Civil Case, demanding that Dropbox designate one or more witnesses to provide testimony on
9 August 6, 2015, regarding a list of 12 deposition topics and 26 subtopics contained in the attached
10 Notice of Trial Video Deposition of Dropbox, Inc. A true and correct copy of this subpoena is
11 attached as Exhibit J.

12 14. On July 28, 2015, I sent a letter to Plaintiff indicating that Dropbox objected to the
13 Deposition subpoena and intended to file a motion to quash, and further explained that Dropbox
14 had no witness available on August 6, 2015. A true and correct copy of this letter is attached as
15 Exhibit K.

16 15. Between July 29, 2015 and August 3, 2015, I met and conferred with counsel for
17 Plaintiff regarding the proposed deposition date. On August 3, 2015, Plaintiff served Dropbox
18 with a new Subpoena to Testify at a Deposition in a Civil Action ("Deposition Subpoena") that
19 contains a deposition date of August 25, 2015 but is otherwise substantively identical to the prior
20 deposition subpoena. Attached as Exhibit L is a true and correct copy of the Deposition
21 Subpoena.

22 I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true
23 and correct to the best of my knowledge.

24 DATED this 5th day of August, 2015 at Seattle, Washington

25
26 
John R. Tyler

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

INTERMARINE, LLC.

Plaintiff

v.

SPLIETHOFF BEVRACHTINGSKANTOOR B.V.,
SPLIETHOFF AMERICAS, INC., KASPER BIHLET

Defendant

Civil Action No. 4:14-cv-00145

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

DROPBOX, INC. ATTENTION: CUSTODIAN OF RECORDS
CORPORATION SERVICE COMPANY, AS REGISTERED AGENT FOR SERVICE OF PROCESS

(Name of person to whom this subpoena is directed)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: A certified copy of the records listed on the attached Exhibit A. PLEASE SEE ATTACHED CONSENT TO DISCLOSURE OF THE CONTENTS OF STORED ELECTRONIC COMMUNICATIONS FROM ACCOUNT HOLDER/USER/ ORIGINATOR/ ADDRESSEE KASPER BIHLET

Place: Please mail to Daniel W. Jackson (attorney for Dropbox account holder Kasper Bihlet), The Jackson Law Firm, 3900 Essex Lane, Suite 1116, HOUSTON, TX, 77027

Date and Time:

11/14/2014 0:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/30/2014

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Intermarine, LLC, who issues or requests this subpoena, are:

Cecily L. Kaffer, The Kullman Firm, 63 South Royal Street, Suite 1100, Mobile, AL 36602, Tel: 251/432-1811

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 4:14-cv-00145

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*I received this subpoena for *(name of individual and title, if any)* Dropbox, Inc.on *(date)* _____

☒ I served the subpoena by delivering a copy to the named person as follows: CORPORATION SERVICE
COMPANY, AS REGISTERED AGENT FOR DROPBOX, INC., 2711 CENTERVILLE RD SUITE 400,
WILMINGTON, DE 19808 on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

*Server's signature*_____
*Printed name and title*_____
Server's address

Additional information regarding attempted service, etc.: _____

EXHIBIT A

1. Any and all documents uploaded to Dropbox account KBihlet@GMail.com from January 2, 2012, to December 26, 2013.
2. Any and all documents uploaded to Dropbox account KBihlet@Hotmail.com from January 2, 2012, to December 26, 2013.
3. Any and all documents downloaded from Dropbox account KBihlet@GMail.com from January 1, 2012, to December 26, 2013.
4. Any and all documents downloaded from Dropbox account KBihlet@Hotmail.com from January 1, 2012, to December 26, 2013.
5. Any and all documents accessed or viewed in Dropbox account KBihlet@GMail.com from January 1, 2012, to December 26, 2013.
6. Any and all documents accessed or viewed in Dropbox account KBihlet@Hotmail.com from January 1, 2012, to December 26, 2013.
7. Any and all communications relating to referrals to Dropbox account KBihlet@GMail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.
8. Any and all communications relating to referrals to Dropbox account KBihlet@Hotmail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.
9. Any and all communications relating to links to Dropbox account KBihlet@GMail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.

10. Any and all communications relating to links to Dropbox account KBihlet@Hotmail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.

11. An audit log of (a) storing, (b) synching, and (c) sharing activity relative to Dropbox account KBihlet@GMail.com from January 1, 2012, to December 26, 2013.

12. An audit log of (a) storing, (b) synching, and (c) sharing activity relative to Dropbox account KBihlet@Hotmail.com from January 1, 2012, to December 26, 2013.

ACCOUNT HOLDER/USER/ORIGINATOR/ADDRESSEE KASPER BIHLET HAS GIVEN HIS LAWFUL CONSENT TO THE DISCLOSURE OF THE CONTENTS OF HIS STORED COMMUNICATIONS. (EXHIBIT B)

INTERMARINE SUBPOENA TO DROPBOX EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

INTERMARINE, LLC,

Plaintiff

CASE NO. 4:14-CV-00145

v.

SPLIETHOFF
BEVRACHTINGSKANTOOR B.V.,
SPLIETHOFF AMERICAS, INC., and
KASPER BIHLET,

Defendants

CONSENT TO DISCLOSURE OF CONTENTS
OF STORED ELECTRONIC COMMUNICATIONS
BY KASPER BIHLET

My name is Kasper Bihlet. I am a defendant in the above referenced lawsuit and a former employee of plaintiff Intermarine, LLC. I am also the account holder of Dropbox accounts KBihlet@GMail.com and KBihlet@Hotmail.com.

I have reviewed Intermarine's subpoena to Dropbox (including Exhibit A thereto) for records and communications related to my Dropbox accounts KBihlet@GMail.com and KBihlet@Hotmail.com.

I hereby give my lawful CONSENT to the disclosure of the CONTENTS of my electronic communications to attorney Daniel Jackson in response to the subpoena served by Intermarine.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

October 29, 2014 Kasper Bihlet

SWORN TO and subscribed before me

On this 29 day of October, 2014

NOTARY PUBLIC

MY COMMISSION EXPIRES: August 21, 2018





Dropbox, Inc.
185 Berry St., Suite 400
San Francisco, CA 94107
888-446-8396

November 14, 2014

VIA FEDEX AND EMAIL

Daniel W. Jackson
The Jackson Law Firm
3900 Essex Lane, Suite 1116
Houston, TX 77027

**Re: *Intermarine, LLC v. Spliethoff Bevrachtungskantoor B.V., Spliethoff Americas, Inc.,
Kasper Bihlet 4:14-cv-00145 (US District Court for the Southern District of Texas)***

Dear Mr. Jackson,

Non-party Dropbox, Inc. ("Dropbox") submits the following objections to the Subpoena To Produce Documents, Information, Or Objects Or To Permit Inspection Of Premises In A Civil Action (the "Subpoena").

General Objections

Dropbox objects that the subpoena did not provide a reasonable time for compliance.

Dropbox objects that the subpoena fails to comply with Fed. R. Civ. P. 45(c)(2)(A).

Dropbox objects to the extent that the Subpoena purports to impose any obligations that are inconsistent with California or federal law.

Dropbox objects that the Subpoena seeks information from a non-party that is in the possession of a party.

Dropbox objects to the Subpoena to the extent that the Subpoena seeks information that may not be produced in civil discovery under the Electronic Communications Privacy Act ("ECPA") or other privacy laws. 18 U.S.C. 2701.

Dropbox objects to the extent that the Subpoena seeks all documents within its possession, custody, or control. Dropbox will produce documents, if at all, that can be located after a reasonably diligent search.

Dropbox objects that the party issuing the Subpoena failed to take reasonable steps to avoid imposing undue burden or expense on Dropbox.

Dropbox objects to producing information in the absence of a protective order.

Dropbox objects to the Subpoena to the extent it calls for information protected by any privilege, including the attorney-client privilege, work product protection, or any other applicable privilege, immunity or restriction on discovery.

Specific Objections and Responses

Request No. 1 for Documents to be Produced

Any and all documents uploaded to Dropbox account KBihlet@gmail.com from January 2, 2012, to December 26, 2013.

Response to Request No. 1 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Request No. 2 for Documents to be Produced

Any and all documents uploaded to Dropbox account kbihlet@hotmail.com from January 2, 2012 to December 26, 2013.

Response to Request No. 2 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Subject to these objections, and after conducting a reasonably diligent search, Dropbox responds that it is unable to locate information responsive to this request.

Request No. 3 for Documents to be Produced

Any and all documents downloaded from Dropbox account kbiilet@gmail.com from January 1, 2012 to December 26, 2013.

Response to Request No. 3 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Request No. 4 for Documents to be Produced

Any and all documents downloaded from Dropbox account kbiilet@hotmail.com from January 1, 2012 to December 26, 2013.

Response to Request No. 4 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that

is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Subject to these objections, and after conducting a reasonably diligent search, Dropbox responds that it is unable to locate information responsive to this request.

Request No. 5 for Documents to be Produced

Any and all documents accessed or viewed in Dropbox account kbihlet@gmail.com from January 1, 2012 to December 26, 2013.

Response to Request No. 5 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Request No. 6 for Documents to be Produced

Any and all documents accessed or viewed in Dropbox account kbihlet@hotmail.com from January 1, 2012 to December 26, 2013.

Response to Request No. 6 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Subject to these objections, and after conducting a reasonably diligent search, Dropbox responds that it is unable to locate information responsive to this request.

Request No. 7 for Documents to be Produced

Any and all communications relating to referrals to Dropbox account kbihlet@gmail.com made by Kasper Bihlet to any other person January 1, 2012 to December 26, 2013.

Response to Request No. 7 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Request No. 8 for Documents to be Produced

Any and all communications relating to referrals to Dropbox account kbihlet@hotmail.com made by Kasper Bihlet to any other person January 1, 2012 to December 26, 2013.

Response to Request No. 8 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Subject to these objections, and after conducting a reasonably diligent search, Dropbox responds that it is unable to locate information responsive to this request.

Request No. 9 for Documents to be Produced

Any and all communications relating to links to Dropbox account kbihlet@gmail.com made by Kasper Bihlet to any other person between January 1, 2012 and December 26, 2013.

Response to Request No. 9 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Request No. 10 for Documents to be Produced

Any and all communications relating to links to Dropbox account kbihlet@hotmail.com made by Kasper Bihlet to any other person between January 1, 2012 and December 26, 2013.

Response to Request No. 10 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Subject to these objections, and after conducting a reasonably diligent search, Dropbox responds that it is unable to locate information responsive to this request.

Request No. 11 for Documents to be Produced

An audit log of a) storing, b) synching, and c) sharing activity relative to Dropbox account kbihlet@gmail.com from January 1, 2012 to December 26, 2013.

Response to Request No. 11 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Request No. 12 for Documents to be Produced

An audit log of a) storing, b) synching, and c) sharing activity relative to Dropbox account kbiulet@hotmail.com from January 1, 2012 to December 26, 2013.

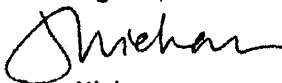
Response to Request No. 12 for Documents to be Produced

Dropbox objects that the request seeks the content of communications in violation of the Electronic Communications Privacy Act. Dropbox cannot provide content information in response to a civil subpoena. Dropbox objects that this request is harassing to a third party and seeks information that is in the possession of a party. Dropbox further objects that this request is overbroad, seeks irrelevant materials, imposes an undue burden, and did not provide a reasonable time for compliance.

Subject to these objections, and after conducting a reasonably diligent search, Dropbox responds that it is unable to locate information responsive to this request.

If you have any questions, please email me at jean@dropbox.com.

Best regards,

A handwritten signature in black ink, appearing to read "Niehaus", with a stylized flourish at the end.

Jean Niehaus
Legal Counsel



March 3, 2015

Dear Customer:

The following is the proof-of-delivery for tracking number **771871524898**.

Delivery Information:

Status:	Delivered	Delivery location:	3900 ESSEX LN 1116 HOUSTON, TX 77027
Signed for by:	J.FRANK	Delivery date:	Nov 17, 2014 11:26
Service type:	FedEx Standard Overnight		
Special Handling:	Deliver Weekday		

A black and white image of a handwritten signature, which appears to be "J. Frank", written over a background of repeating "FedEx" logos.

Shipping Information:

Tracking number:	771871524898	Ship date:	Nov 14, 2014
-------------------------	--------------	-------------------	--------------

Recipient:
DANIEL W-JACKSON
THE JACKSON LAW FIRM
3900 ESSEX LANE
SUITE 1116
HOUSTON, TX 77027 US

Shipper:
Dropbox
Dropbox, Inc.
185 Berry Street
Ste 400
SAN FRANCISCO, CA 94107 US

Thank you for choosing FedEx.

CSC

Case 4:14-cv-00145 Document 92 Filed in TXSD on 02/27/15 Page 1 of 3

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

INTERMARINE, LLC,

Plaintiff

v.

**SPLIETHOFF
BEVRACHTINGSKANTOOR B.V.,
SPLIETHOFF AMERICAS, INC., and
KASPER BIHLET,**

Defendants

CASE NO. 4:14-CV-00145

ORDER TO PRODUCE DOCUMENTS

This matter came before the Court on the unopposed motion of plaintiff Intermarine, LLC, to compel non-party Dropbox, Inc., to produce documents.

The record reflects: that plaintiff Intermarine, LLC, properly served a subpoena on non-party Dropbox, Inc., for the production of various documents from or related to the Dropbox account maintained by defendant Kasper Bihlet, as itemized on Exhibit A to the subpoena; a consent form signed by Bihlet was served with the subpoena; the subpoena called for Dropbox to produce documents, to counsel for Bihlet on or before November 14, 2014; and non-party Dropbox has not responded to the subpoena.

Accordingly, the Court finds that plaintiff's motion is due to be GRANTED.

The Court hereby orders Dropbox to produce the following documents within ten (10) days of receipt of this order:

1. Any and all documents uploaded to Dropbox account KBihlet@GMail.com from January 2, 2012, to December 26, 2013.

2. Any and all documents uploaded to Dropbox account KBihlet@Hotmail.com from January 2, 2012, to December 26, 2013.

Case 4:14-cv-00145 Document 92 Filed in TXSD on 02/27/15 Page 2 of 3

3. Any and all documents downloaded from Dropbox account KBihlet@GMail.com from January 1, 2012, to December 26, 2013.

4. Any and all documents downloaded from Dropbox account KBihlet@Hotmail.com from January 1, 2012, to December 26, 2013.

5. Any and all documents accessed or viewed in Dropbox account KBihlet@GMail.com from January 1, 2012, to December 26, 2013.

6. Any and all documents accessed or viewed in Dropbox account KBihlet@Hotmail.com from January 1, 2012, to December 26, 2013.

7. Any and all communications relating to referrals to Dropbox account KBihlet@GMail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.

8. Any and all communications relating to referrals to Dropbox account KBihlet@Hotmail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.

9. Any and all communications relating to links to Dropbox account KBihlet@GMail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.

10. Any and all communications relating to links to Dropbox account KBihlet@Hotmail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.

11. An audit log of (a) storing, (b) synching, and (c) sharing activity relative to Dropbox account KBihlet@GMail.com from January 1, 2012, to December 26, 2013.

Case 4:14-cv-00145 Document 92 Filed in TXSD on 02/27/15 Page 3 of 3

12. An audit log of (a) storing, (b) synching, and (c) sharing activity relative to Dropbox account KBihlet@hotmail.com from January 1, 2012, to December 26, 2013.

Plaintiff Intermarine, LLC, is directed to serve this order upon Dropbox, Inc.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", written over a horizontal line.

Lee H. Rosenthal

United States District Judge

February 27, 2015

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
Southern District of Texas

INTERMARINE, LLC.

Plaintiff

v.

SPLIETHOFF BEVRACHTINGSKANTOOR B.V.,
SPLIETHOFF AMERICAS, INC., KASPER BIHLET*Defendant*

Civil Action No. 4:14-cv-00145

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: DROPBOX, INC., ATTENTION: CUSTODIAN OF RECORDS
CORPORATION SERVICE COMPANY, AS REGISTERED AGENT FOR SERVICE OF PROCESS*(Name of person to whom this subpoena is directed)*

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: A certified copy of the records listed on the attached Exhibit A. PLEASE SEE ATTACHED CONSENT TO DISCLOSURE OF THE CONTENTS OF STORED ELECTRONIC COMMUNICATIONS FROM ACCOUNT HOLDER/USER/ ORIGINATOR/ ADDRESSEE KASPER BIHLET

Place: Please mail to Daniel W. Jackson (attorney for Dropbox
account holder Kasper Bihlet), The Jackson Law Firm,
3900 Essex Lane, Suite 1116, HOUSTON, TX, 77027

Date and Time:

11/14/2014 0:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/30/2014

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Intermarine, LLC
, who issues or requests this subpoena, are:

Ceddy L. Kaffer, The Kullman Firm, 63 South Royal Street, Suite 1100, Mobile, AL 36602, Tel: 251/432-1811

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

EXHIBIT A

1. Any and all documents uploaded to Dropbox account KBihlet@GMail.com from January 2, 2012, to December 26, 2013.
2. Any and all documents uploaded to Dropbox account KBihlet@Hotmail.com from January 2, 2012, to December 26, 2013.
3. Any and all documents downloaded from Dropbox account KBihlet@GMail.com from January 1, 2012, to December 26, 2013.
4. Any and all documents downloaded from Dropbox account KBihlet@Hotmail.com from January 1, 2012, to December 26, 2013.
5. Any and all documents accessed or viewed in Dropbox account KBihlet@GMail.com from January 1, 2012, to December 26, 2013.
6. Any and all documents accessed or viewed in Dropbox account KBihlet@Hotmail.com from January 1, 2012, to December 26, 2013.
7. Any and all communications relating to referrals to Dropbox account KBihlet@GMail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.
8. Any and all communications relating to referrals to Dropbox account KBihlet@Hotmail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.
9. Any and all communications relating to links to Dropbox account KBihlet@GMail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.

10. Any and all communications relating to links to Dropbox account KBihlet@Hotmail.com made by Kasper Bihlet to any other person January 1, 2012, to December 26, 2013.

11. An audit log of (a) storing, (b) synching, and (c) sharing activity relative to Dropbox account KBihlet@GMail.com from January 1, 2012, to December 26, 2013.

12. An audit log of (a) storing, (b) synching, and (c) sharing activity relative to Dropbox account KBihlet@Hotmail.com from January 1, 2012, to December 26, 2013.

ACCOUNT HOLDER/USER/ORIGINATOR/ADDRESSEE KASPER BIHLET HAS GIVEN HIS LAWFUL CONSENT TO THE DISCLOSURE OF THE CONTENTS OF HIS STORED COMMUNICATIONS. (EXHIBIT B)

INTERMARINE SUBPOENA TO DROPBOX EXHIBIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

INTERMARINE, LLC

Plaintiff

CASE NO. 4:14-cv-00135

SPINETHORF
BEVACHHINGSKANTOORBY
SPINETHORF AMERICA, INC. and
KASPER BILLET

Defendants

CONSENT TO DISCLOSURE OF CONTENTS
OF STORED ELECTRONIC COMMUNICATIONS
BY KASPER BILLET

I, Kasper Billet, am a defendant in the above referenced lawsuit and a former employee of Plaintiff Intermarine, LLC. I am also the account holder of two Dropbox accounts: KBillet@gmail.com and KBillet@hotmail.com.

I have reviewed Intermarine's subpoena to Dropbox (including Exhibit A thereto) for records and communications related to my Dropbox accounts KBillet@gmail.com and KBillet@hotmail.com.

I hereby give my lawful CONSENT to the disclosure of the CONTENTS of my electronic communications to attorney Daniel Jackson in response to the subpoena served by Intermarine.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

October 29, 2014 Kasper Billet

SWORN TO and subscribed before me

On this 29 day of October 2014

NOTARY PUBLIC

MY COMMISSION EXPIRES August 22, 2018



AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 4:14-CV-00145

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* DROPBOX, INC.
on *(date)* 10/31/14

☒ I served the subpoena by delivering a copy to the named person as follows: C/O REGISTERED AGENT
CORPORATION SERVICE CO. 2711 CENTERVILLE RD. WILMINGTON, DE 19808

ACCEPTED BY: PAUL MATTHEWS (authorized person) on *(date)* 10/31/14 , or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: 10/31/14



Server's signature

KEVIN S. DUNN

Printed name and title

BRANDYWINE PROCESS SERVERS, LTD
PO BOX 1360 WILMINGTON, DE 19899
302-475-2600

Server's address

Additional information regarding attempted service, etc.:

THE KULLMAN FIRM

A Professional Law Corporation

www.kullmanlaw.com

Cecily L. Kaffer
clk@kullmanlaw.com

March 2, 2015

Corporation Service Company
2711 Centerville Rd Suite 400
Wilmington DE 19808

Re: Dropbox, Inc.

Dear Sir or Madam:

Please find enclosed an order entered by Judge Rosenthal, United States District Court, Southern District of Texas, in *Intermarine v. Spliethoff, et al*, 4:14-CV-00145, compelling DropBox to comply with the subpoena served on October 31, 2014, a copy of which is enclosed for your reference.

Please note that the order and subpoena call for DropBox to mail the subject documents to:

Daniel W. Jackson
The Jackson Law Firm
3900 Essex Lane, Suite 1116
Houston, TX, 77027
Tel: (713) 522-4435

Very truly yours,


Cecily L. Kaffer

Enc. 2

Mobile Office:

1100 Riverview Plaza
63 South Royal Street
Mobile, Alabama 36602

Post Office Box 1287
Mobile, Alabama 36633

Telephone: (251) 432-1811
Facsimile: (251) 433-1230

PERKINScoie

1201 Third Avenue
Suite 4900
Seattle, WA 98101-3099

+1.206.359.8000
+1.206.359.9000
perkinscoie.com

March 9, 2015

Randy Tyler
RTyler@perkinscoie.com
D. (206) 359-3034
F. (206) 359-7262

VIA EMAIL, OVERNIGHT MAIL, AND FACSIMILE

Cecily L. Kaffer
The Kullman Firm
63 South Royal Street, Suite 1100
Mobile, AL 36602
Email Address: clk@kullmanlaw.com

Daniel W. Jackson
The Jackson Law Firm
3900 Essex Lane, Suite 1116
Houston, TX 77027
Fax Number: (713) 527-8850

Re: Subpoena for Dropbox Records, *Intermarine, LLC. v. Spliethoff Bevrachtungskantoor B.V., et al.*, United States District Court for the Southern District of Texas, Case No. 4:14-cv-00145

Dear Ms. Kaffer and Mr. Jackson:

We represent non-party Dropbox, Inc., and respond to the subpoena and court order served on Dropbox in this matter. The subpoena and order seek various communications and records related to a Dropbox user account between the dates of January 2, 2012 and December 26, 2013, accompanied by a document purportedly signed by the accountholder consenting to disclosure of the records. Because the order incorrectly suggests that Dropbox did not respond to the subpoena, we write to correct the record, object as further described below, and propose an alternative resolution that avoids the need for motion practice.

Contrary to the representation that Dropbox “has not responded to the subpoena,”¹ Dropbox in fact objected to the subpoena on November 14, 2014.² Dropbox sent its objection letter to Mr. Jackson, the attorney to whom the subpoena directed production. A copy of the letter is attached

¹ See Order to Produce Documents at 1.

² See Fed. R. Civ. P. 45(2)(B) (allowing subpoena recipient to serve objections on “the party or attorney designated in the subpoena.”)

Cecily L. Kaffer
Daniel W. Jackson
March 9, 2015
Page 2

hereto. Dropbox therefore objects to the order you obtained because Dropbox was neither given notice or an opportunity to respond to your motion to compel, as required under Rule 45.³

However, in order to resolve this matter amicably, Dropbox will agree to voluntarily comply with a stipulated court order that requires the accountholder to consent to disclosure through the email address(es) associated with the accountholder's Dropbox account(s). Among other things, the stipulated order would require the subscriber to send specified language via email to counsel for Dropbox, after which Dropbox could disclose reasonably available, responsive records. If this is acceptable to you in principle, I will provide you with a proposed stipulated order.

In the meantime, Dropbox expressly preserves and does not waive any available objections, including as stated in its November 14, 2014 letter to Mr. Jackson, and as further set forth below.

For example, Dropbox objects that the subpoena and order ignore the jurisdictional requirements of Rule 45, which require production within 100 miles of where Dropbox "resides, is employed, or regularly transacts business in person."⁴ Dropbox is located in San Francisco, California; accordingly, the subpoena must call for production in California, and any litigation regarding the subpoena must take place in the Northern District of California.⁵

Moreover, Dropbox objects to the subpoena and order because the federal Stored Communications Act prohibits Dropbox from disclosing communications content.⁶ While

³ Fed. R. Civ. P. 45(d)(2)(B)(i) ("At any time, *on notice to the commanded person*, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.") (emphasis added).

⁴ Fed. R. Civ. P. 45(c)(2)(a) (stating that the "place of compliance" must be "within 100 miles" of where the subpoenaed party "transacts business in person.").

⁵ Fed. R. Civ. P. 45(d)(2)(B)(i) (upon objection, motion to compel must be made in "the court for the district where compliance is required"); Fed. R. Civ. P. 45(c)(2)(a) ("place of compliance" must be "within 100 miles" of where the subpoenaed party "transacts business in person.").

⁶ 18 U.S.C. § 2702(a)(1),(2)); *see also*, *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011) (Non-governmental entities may not obtain the content of communications with a civil discovery demand because it would invade "the specific interests that the [SCA] seeks to protect."); *Theofel v. Farey-Jones*, 359 F.3d 1066, 1073-74 (9th Cir. 2004) (Civil discovery demand for content is not valid legal process under the SCA.); *Fontenot v. Brouillette*, No. 4:10-CV- 01053, slip op. at 2 (S.D. Tex. Feb. 9, 2012) ("The SCA contains no exceptions for civil discovery."); *Special Mkts. Ins. Consultants, Inc. v. Lynch*, No. 11 C 9181, 2012 WL 1565348, at *2-3 (N.D. Ill. May 2, 2012) (holding that civil subpoenas are barred by the SCA, and a request for 18 months of content is improper in any event; proper course is to issue request for production to the user); *J.T. Shannon Lumber Co. v. Gilco Lumber, Inc.*, No. 2:07-CV- 119, 2008 WL 3833216, at *1 (N.D. Miss. Aug. 14, 2008) ("[T]here is no exception to th[e] SCA's] statutory prohibition against disclosure pursuant to a civil discovery subpoena."); *In re*

Cecily L. Kaffer
Daniel W. Jackson
March 9, 2015
Page 3

consent may permit Dropbox to disclose content, such disclosure is voluntary and Dropbox is therefore not required to honor signed consent forms.⁷

Dropbox further objects that the subpoena and order improperly seek from a non-party information that is equally available from a party to the case. Courts have recognized that the proper way to obtain the contents of a litigant's electronic communications is to issue a request for production directly to the litigant.⁸ The Dropbox account(s) at issue purportedly belong to a Defendant in this case, who is not subject to the SCA's disclosure prohibitions and is in the best position to preserve, produce, and authenticate the content of his or her account(s).

In addition, Dropbox objects that the subpoena and order are overbroad, vague, unduly burdensome, and seek records that are not reasonably accessible. For example, and as explained in Dropbox's prior objection letter, Dropbox has no reasonably available records responsive to Requests for Production 2, 4, 6, 8, 10, and 12.

Finally, Dropbox objects to the extent the subpoena and order seek confidential, proprietary, or otherwise privileged information.

Please feel free to contact me if you have any questions.

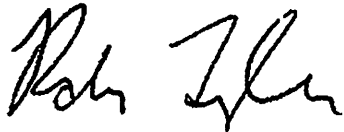
Subpoena Duces Tecum to AOL, LLC, 550 F. Supp. 2d 606, 611-12 (E.D. Va. 2008) (same); *O'Grady v. Superior Court*, 139 Cal. App. 4th 1423, 1441-47 (2006) (same).

⁷ 18 U.S.C. § 2702(b)(3) (stating that a provider "may" disclose content with the consent of a subscriber); *In re Facebook, Inc.*, 923 F. Supp. 2d 1204, 1206 (N.D. Cal. Sept. 20, 2012) ("Under the plain language of Section 2702, while consent may permit production by a provider, it may not require such a production.") (emphasis in original).

⁸ *Suzlon*, 671 F.3d at 731 (noting that the inability to obtain documents from a provider does not affect the ability to obtain the documents directly from the user); *Giacchetto v. Patchogue-Medford Union Free Sch. Dist.*, --- F.R.D. ---, 2013 WL 2897054, at *5 (E.D.N.Y. May 6, 2013) ("[T]he Court sees no basis at this time why Defendant should go through a third-party provider to access Plaintiff's social networking postings when Plaintiff has access to this information herself.") (collecting cases directing parties to produce Facebook records themselves); *Reid v. Ingerman Smith LLP*, No. CV 2012-0307, 2012 WL 6720752, at *3 (E.D.N.Y. Dec. 27, 2012) ("Plaintiff must produce for her counsel all social media posts, communications and photographs made since January 2008. Counsel must review the records and produce information to defendants that is relevant as outlined in this Order to respond to Interrogatory 16 and Document Request 5."); *O'Grady*, 139 Cal. App. 4th at 1446 ("Responding . . . routine subpoenas would indeed be likely to impose a substantial new burden on service providers.").

Cecily L. Kaffer
Daniel W. Jackson
March 9, 2015
Page 4

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Tyler". The signature is written in a cursive, flowing style.

Randy Tyler

JRT:JRT



Dropbox, Inc.
185 Berry St., Suite 400
San Francisco, CA 94107
888-446-8396

November 14, 2014

VIA FEDEX AND EMAIL

Daniel W. Jackson
The Jackson Law Firm
3900 Essex Lane, Suite 1116
Houston, TX 77027

**Re: *Intermarine, LLC v. Spliethoff Bevrachtungskantoor B.V., Spliethoff Americas, Inc.,
Kasper Bihlet 4:14-cv-00145 (US District Court for the Southern District of Texas)***

Dear Mr. Jackson,

Non-party Dropbox, Inc. ("Dropbox") submits the following objections to the Subpoena To Produce Documents, Information, Or Objects Or To Permit Inspection Of Premises In A Civil Action (the "Subpoena").

General Objections

Dropbox objects that the subpoena did not provide a reasonable time for compliance.

Dropbox objects that the subpoena fails to comply with Fed. R. Civ. P. 45(c)(2)(A).

Dropbox objects to the extent that the Subpoena purports to impose any obligations that are inconsistent with California or federal law.

Dropbox objects that the Subpoena seeks information from a non-party that is in the possession of a party.

Dropbox objects to the Subpoena to the extent that the Subpoena seeks information that may not be produced in civil discovery under the Electronic Communications Privacy Act ("ECPA") or other privacy laws. 18 U.S.C. 2701.